

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Thorndale, Texas) )

MM Docket No. 99-243  
RM-9675

SEP 07 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: Magalie Roman Salas, Secretary  
for direction to  
John A. Karousos, Chief  
Allocations Branch, Policy and Rules Division  
Mass Media Bureau

REPLY COMMENTS OF ELGIN FM LIMITED PARTNERSHIP

1. Elgin FM Limited Partnership ("Elgin FM") hereby replies to the Comments submitted by Houston Christian Broadcasters, Inc. ("HCBI") to the Notice of Proposed Rule Making ("NPRM"), DA 99-1292, released July 2, 1999.

2. As Elgin FM previously stated in its opening Comments, the proposed allotment of Channel \*286A, reserved for noncommercial use, at Thorndale, Texas is plainly unwarranted: the underlying circumstances strongly support preservation of that channel for commercial use, whether at Thorndale or in the alternate the community of Thrall, Texas.

3. As Elgin FM also noted, with respect to reservation of the proposed channel for noncommercial service, the Commission has historically disfavored such reservations in the commercial portion of the band. E.g., Grand Junction, Colorado, 11 FCC Rcd 499 (Allocations Branch 1996); Rosendale, New York, 10 FCC Rcd 11472 (Allocations Branch 1995). HCBI has failed to make the essential threshold showing to support the proposed noncommercial reservation of the commercial channel.

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4. Moreover, even if no other noncommercial channels were deemed to be available, it has clearly been established that there is a demand for commercial channels in Thorndale, or in the alternative, Thrall, as Elgin FM has counterproposed. Elgin FM reiterates its intention to take such steps as may be necessary to file for Channel 286A (or C3) in Thorndale, or Thrall, as a commercial channel, and if its application is successful, to construct and operate a station on such channel.

5. Providing HCBI with Channel 286A unilaterally is completely inconsistent with Ashbacker Radio Corporation v. FCC, 326 U.S. 327 (1945) and Commission precedent following that decision. As Elgin FM previously noted, it would also be inconsistent with common sense and fundamental fairness, a total of five entities have already demonstrated their interest in a commercial channel in Thorndale. Giving such a channel unilaterally to a sixth applicant would obviously deprive the others of their statutory right to compete for the frequency. Even when additional channels which have been shown to be available for other applicants, the Commission has historically declined to reserve a commercial allotment for noncommercial operation. See, e.g., Grand Junction, Colorado; Rosendale, New York, supra. Here, it is acknowledged that no other commercial channels are available at all.

6. While HCBI would understandably prefer to short-circuit the comparative process (whether that process involves hearing, auctions, or some other administrative mechanism), so too would

Elgin FM (and presumably the four other Thorndale applicants). No legitimate basis exists on which the Commission could grant such "short-circuit" treatment to one of the Thorndale applicants and thereby refuse it to all others.

7. Elgin FM is already on record as supporting the initiation of commercial FM service in Thorndale, and Elgin FM believes that allotment of Channel 286A or 286C3 -- either to Thorndale or to Thrall -- as a commercial channel would be in the public interest. Elgin FM will take appropriate steps to apply for either channel if it is allotted to either community. As discussed above, however, Elgin FM strongly opposes the reservation of the channel for noncommercial use and the proposed grant of that channel to HCBI.

WHEREFORE, for the reasons stated, Elgin FM Limited Partnership: supports the allotment of commercial FM Channel 286A (or as upgraded to a C3) to Thorndale, Texas; counterproposes, in the alternative, that that channel be allotted to Thrall, Texas; and strongly opposes the reservation of that channel for noncommercial use and/or the unilateral grant of that channel to HCBI.

Respectfully submitted,



Ann C. Farhat

Bechtel & Cole Chartered  
1901 L Street, N.W., Suite 250  
Washington, D.C. 20036  
202/833-4190

Counsel for Elgin FM  
Limited Partnership

September 7, 1999

# **CERTIFICATE OF SERVICE**

I, Ann C. Farhat, do hereby certify that on this 7th day of September, 1999, I have caused a copy of the foregoing Reply Comments of Elgin FM Limited Partnership to be served by first class United States mail, postage pre-paid, on the parties listed below:

Robert L. Thompson, Esq.  
Taylor, Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, VA 22314  
(Counsel for Charles E. Crawford)

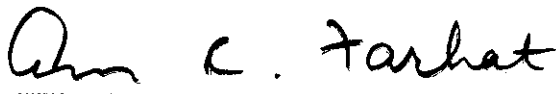
Henry E. Crawford, Esq.  
Suite 900  
1150 Connecticut Avenue, NW  
Washington, DC 20036-4912  
(Counsel for Roy Henderson  
d/b/a Jackson Lake Broadcasting Co.  
and Cameron Broadcasting Company)

Jeffrey D. Southmayd, Esq.  
Southmayd & Miller  
1220 Nineteenth Street, NW, Suite 400  
Washington, DC 20036  
(Counsel for Houston Christian Broadcasters, Inc.)

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1901 L Street, NW, Suite 290  
Washington, DC 20036  
(Counsel for Double K Broadcasting)

Mr. Charles McGregor  
Centex Broadcastng Company Ltd.  
Radio Station KRXT(FM)  
P.O. Box 1560  
Rockdale, TX 76567

John A. Karousos  
Chief, Allocations Branch  
Policy & Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

  
Ann C. Farhat